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In The

Supreme Court of the United States

October Term 1953

No. 18

George Earl Toolson, *Petitioner*

vs.

New York Yankees, Inc., et al., *Respondents*

Petitioner's Reply Brief on Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONERS REPLY BRIEF

I. Respondents in Their Brief Raise Two Questions Not Properly Before This Court

(a) *Questions*

The question presented to the court is "Are the activities and organization of professional baseball, as set forth in petitioners complaint, subject to the Federal Anti-Trust Laws?". It was on that question and no other that certiorari was granted. It is obvious the sole question now before the Courts is one of jurisdiction of the Federal Courts.

Respondents would attempt now to bring in the question, assuming the Court does have jurisdiction, does petitioners complaint state a cause of action (1) because the only source of injury to the petitioner is the player regulations which do not effect commerce and do not injure the public (2) restraints concerning radio, television and league territories do not injure petitioner (3) the complaint alleges a labor dispute which is exempted from the Anti-Trust Laws by provision of the Clayton and Norris La Guardia Acts.

Since the above set forth three questions go beyond the single question here on certiorari, petitioner will not answer them except briefly to show the court that he is not without defenses to them.

(b) *Petitioners Cause of Action*

Respondents consistently misunderstand petitioners position. They assert he is injured only by the player regulations and has no concern with the other alleged restraints of trade and other facets of the Baseball Monopoly.

Respondents again take each item separately, they divide the whole into parts, consider each part, but completely ignore the interrelation of the parts and the whole.

Petitioners cause of action is based on the acts of a combination monopolizing professional baseball. It is this monopoly that has deprived Plaintiff of his means of living. True the player regulations are the particular vehicle by which the Plaintiff is blacklisted. However, those regulations are an integral and vital part of the Defendant's monopoly. Without those regulations Defendant's monopoly would be seriously weakened. It is this self same monopoly that has controlled and restrained the interstate exhibition of professional baseball games by radio and television. Again this control and restraint

of the exhibition of professional baseball games is integral to the Defendants control and power over the players thru the players regulations.

It is this combination to restrain trade and this monopoly which have proximately caused Plaintiff's damages, and it is this monopoly and combination which is in violation of the Anti Trust Acts by restraining and monopolizing interstate trade in the exhibition of professional baseball games. Plaintiff is injured by reason of this complete monopoly of, and combination in the restraint of, interstate trade which is forbidden by the Anti Trust laws.

Petitioners position and the true rules of law applicable thereto are shown in the case of *Greenleaf* v. *Brunswick-Balke-Collender Co.*, 79 Fed. Supp. 362.

In this case the Defendant was in the business of manufacturing, selling and servicing billiard tables and supplies incidental thereto. Defendant was alleged to have monopolized this business. The Defendant conducted professional billiard tournaments to stimulate interest and provide advertising for the products. Plaintiff was a professional billiard player who was prevented from participating in Defendant's tournaments. Plaintiff sued for trebile damages under the Anti Trust Acts, in discussing the particular point now before the Court, that Court stated,

> "For the plaintiff to succeed in this action, he must establish (1) that the defendant has violated the Anti-Trust Laws, and (2) that he has sustained damage to his business or property proximately resulting from the acts of the defendant which constitute a violation of the Laws. *Glenn Coal Co.* v. *Dickinson Fuel Co.*, 4 Cir., 72 F. 2d 885. In support of its motion for summary judgment, the defendant insists that the manner in which it conducted the tournaments, including the conditions it imposed on the players and the exclusion of the plaintiff from par-

tic'pation in one of them for any reason it saw fit, w/s not a violation of the Anti-Trust Laws. Therefore it argues that the damage, if any, sustained by the plaintiff was not the proximate result of an act forbidden by the Laws. The plaintiff concedes that the acts of the defendant in conducting the tournaments, standing alone, do not constitute a violation of the Laws. However, he takes the position that, viewing the defendant's action as a whole, since it has unlawfully monopolized the billiard equipment business, its reaching out and taking control of professional billiard tournaments and its barring him therefrom without just cause was in furtherance of its unlawful monopoly. As an explanation of how his being barred assisted the defendant in furthering or maintaining its monopoly, the plaintiff asserts that it set an example and provided a warning for the other players who competed in the tournament in that if they played in public on billiard equipment not manufactured by the defendant they too would not be invited to take part in the tournaments to be held in the future; in this way the defendant insured to itself from year to year the blanket use of the names of the outstanding billiard players in the country for endorsement purposes so that it could proclaim in advertisements that they used the defendant's equipment exclusively.

(2-6) Of course damages are not awarded to a plaintiff for loss to his business or property as the result of any act done by an illegal monopoly; the act must have some reasonable connection with the furtherance or maintenance of the monopoly. See *United Copper Securities Co.* v. *Amalgamated Copper Co.*, 2 Cir., 232 F. 574, 576, 577; *Alexander Melburn Co.* v. *Union Carbide and Carbon Corporation*, 4 Cir., 15 F. 2d 678, cert. den. 273 U. S. 757, 47 S. Ct. 459, 71 L. Ed. 876. Once it becomes apparent, as in the case before us, that the particular act or acts complained of as causing the injury are connected with or part of an unlawful plan to monopolize, the court will not segregate them to determine if they have gone beyond the bounds of legality; it will view the defendant's acts as a whole, for the parts take on the coloring of the general plan or scheme. *Swift &*

Company v. *United States*, 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518; *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423, 28 S. Ct. 572, 52 L. Ed. 865; *Standard Oil Co.* v. *United States*, 283 U. S. 163, 169, 51 S. Ct. 421, 75 L. Ed. 926; *Marienelli* v. *United States*, D. C. N. Y., 227 F. 165, 170; 36 Am. Jur. Sec. 148. A combination may be liable for acts, but for the fact that it is conducting an illegal monopoly, it could perform with impunity. Thus an illegal monopoly cannot discriminate against or refuse to deal with a person without sufficient cause. *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 44 S. Ct. 96, 68 L. Ed. 308; *Eastman Kodak Co.* v. *Southern Photo Material Co.*, 273 U. S. 359, 375, 47 S. Ct. 400, 71 L. Ed. 684; 36 Am. Jur. Sec. 24. The fact that the plaintiff is not engaged in interstate commerce will not aid the defendant. *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U. S. 390, 27 S. Ct. 65, 51 L. Ed. 241, nor does it matter whether the acts done in pursuance of the monopoly which injure the plaintiff are themselves a part of intrastate commerce. *Swift & Company* v. *United States, supra*; *Nash* v. *United States*, 229 U. S. 373, 33S. Ct. 780, 57 L. Ed. 1232."

Greenleaf v. *Brunswick Balke Collender Co.* 79 Fed. Supp. 362 at page 364.

(c) *This Is Not a Labor Dispute*

In the third point above brought out Respondents assert petitioners complaint alleges a labor dispute which is exempted from the Anti-Trust Laws by provisions of the Clayton and Norris La Guardia Acts.

That proposition is patently not true. The exemption from the effect of the Anti-Trust Statutes of the Clayton and Norris-LaGuardia Acts will not apply unless an employer-employee relationship is the *matrix* of the controversy.

Columbia River Packers Association vs. Hinton, 315 U. S. 143, 86 L. Ed. 750.

American Medical Association vs. U. S., 317 U. S. 519, 87 L. Ed. 434.

Ring vs. Spina, 148 Fed. 2d 647.

If that relationship is merely incidentally involved in the controversy and is not truly the matrix thereof the Clayton-Norris-LaGuardia Act exemptions do not apply.

In each case cited by the appellees it is obvious that the primary purpose and intent of the acts being complained of were to control the labor or employer-employee relationship. That relationship in each case formed the matrix of the controversy and the monopoly and/or restraint of interstate commerce was merely incidental, no matter how direct or effective such activities were as a monopoly and/or restraint of interstate commerce. In the case at bar the primary purpose of the combination and conspiracy of the defendants of which appellant complains is the monopoly and restraint of trade and commerce. The effect of the combination and conspiracy of the defendants on any labor or employer-employee relationship is but a necessary incident. Is is immediately obvious that the so called "reserve clause" is not an instrument to control the employee-ballplayer but is an agreement to control the employing ball clubs. It is an agreement to protect the employers against each other in order to more perfectly monopolize and control professional baseball.

It requires no citation of authority to show that the main purpose of the Anti-Trust Laws was to protect the public from monopolies and restraint of trade, and the individual right of action for treble damages was incidental and subordinate being designed to supply an ancillary force of private investigations and investigators to supplement the Department of Justice in law enforcement. Even though being an individual action for treble damages where the primary purpose and intent (necessarily) of the Defendants activities are to control and restrain trade or commerce, the matrix of the controversy is the violation of the Anti-Trust Laws. If the primary

purpose and intent of the Defendants activities are a matter of terms and conditions of employment and the restraint or control of trade and commerce is incidental, the matrix of the controversy is the labor relationship covered by the Clayton and Norris-LaGuardia Acts and the activity falls within the exemption from and exception to the Anti-Trust Acts.

This same proposition is stated in another manner by this Court in

Allen Bradley Co. vs. Local Union No. 3, 325 U. S. 797. In that case the local electrical workers union in New York City, the local electrical equipment manufacturers and the local electrical contractors agreed to bar from the area equipment manufactured outside its boundaries. Recalcitrants were boycotted. The combination was highly successful and profitable to all parties thereto. The action before the court was by an individual outside electrical manufacturer against the combination brought by virtue of the Anti-Trust Acts. The court discussed the two policies of Congress found in the Anti-Trust Acts and in the Clayton and Norris-LaGuardia Acts, those two policies being (1) to preserve a competitive business economy (2) to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining. In discussing these two apparently conflicting policies the court stated at page 806

> "We must determine here how far Congress intended activities under one of these policies to neutralize the results envisioned by the other.
>
> Aside from the fact that the labor union here acted in combination with the contractors and manufacturers, the means it adopted to contribute to the combination's purpose fall squarely within the "specified acts" declared by section 20 not to be violations of Federal law. For the union's contribution to the trade boycott was accomplished through threats that

unless their employers bought their goods from local manufacturers the union laborers would terminate the "relation of employment" with them and cease to perform "work or labor" for them; and through their "recommending, advising, or persuading others by peaceful and lawful means" not to "patronize" sellers of the boycotted electrical equipment. Consequently, under our holdings in the Hutcheson Case and other cases which followed it, had there been no union-contractor-manufacturer combination the union's actions here, coming as they did within the exemptions of the Clayton and Norris-LaGuardia Acts, would not have been violations of the Sherman Act."

and the court stated further at page 809

"It must be remembered that the exemptions granted the unions were special exceptions to a general legislative plan. The primary objective of all the Anti-Trust legislation has been to preserve business competition and to proscribe business monopoly. It would be a surprising thing if Congress, in order to prevent a misapplication of that legislation to labor unions, had bestowed upon such unions complete and unreviewable authority to aid business groups to frustrate its primary objective. For if business groups, by combining with labor unions, can fix prices and divide up markets, it was little more than a futile gesture for Congress to prohibit price fixing by business groups themselves. Seldom, if ever, has it been claimed before, that by permitting labor unions to carry on their own activities, Congress intended completely to abdicate its constitutional power to regulate inter-state commerce and to empower interested business groups to shift our society from a competitive to a monopolistic economy. Finding no purpose of Congress to immunize labor unions who aid and abet manufacturers and traders in violating the Sherman Act, we hold that the district court correctly concluded that the respondents had violated the Act.

Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts

alone or in combination with business groups. This, it is argued, brings about a wholly undesirable result —one which leaves labor unions free to engage in conduct which restrains trade. But the desirability of such an exemption of labor unions is a question for the determination of Congress. Apex Hosiery Co. vs. Leader, 310 U. S. 469, 84 L. Ed. 1311, 60 S. Ct. 982, 128 A. L. R. 1044, supra. It is true that many labor union activities do substantially interrupt the course of trade and that these activities, lifted out of the prohibitions of the Sherman Act, include substantially all, if not all, of the normal peaceful activities of labor unions. It is also true that the Sherman Act "draws no distinction between the restraints effected by violence and those achieved by peaceful . . . means, "Apex Hosiery Co. vs. Leader, supra (310 U. S. 513, 84 L. Ed. 1334, 60 S. Ct. 982, 128 A. L. R. 1044), and that a union's exemption from the Sherman Act is not to be determined by a judicial "judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." United States vs. Hutcheson, supra (312 U. S. 232, 85 L. Ed. 793, 61 S. Ct. 463). Thus, these congressionally permitted union activities may restrain trade in and of themselves. There is no denying the fact that many of them do so, both directly and indirectly. Congress evidently concluded, however, that the chief objective of Anti-Trust legislation, preservation of business competition, could be accomplished by applying the legislation primarily only to those business groups which are directly interested in destroying competition. The difficulty of drawing legislation primarily aimed at trusts and monopolies so that it could also be applied to labor organizations without impairing the collective bargaining and related rights of those organizations has been emphasized both by congressional and judicial attempts to draw lines between permissible and prohibited union activities. There is, however, one line which we can draw with assurance that we follow the congressional purpose. We know that Congress feared the concentrated power of busi-

> ness organizations to dominate markets and prices. It intended to outlaw business monopolies. A business monopoly is no less such because a union participates, and such participation is a violation of the Act."
>
> *Allen Bradley Co. vs. Local Union No. 3*, 325 U. S. 797.
>
> The proposition is again stated, and more succinctly in *United States vs. Women's Sportswear Association*, 336 U. S. 460.

In that case the clothing jobbers and the Stitching Contractors' Association in Boston, entered into an agreement wherein the jobbers agreed to deal only with members of the Stitching Contractors' Association and primarily with those members of the association who are in good standing with the International Ladies Garment Workers' Union. The Defendants argued that the inclusion of the labor provisions made the agreement immune from attack under the Anti-Trust Laws. This Court stated at page 464

> "The labor provisions were incorporated into the second proposal after the first was rejected as violating the Anti-Trust Laws and seem to give nothing to labor that it was not already getting for itself from other as well as from these manufacturers. The restraints here went beyond limiting work to Union shops; it limited it to those Union shops also members of the Association. The trial court found no evidence that the Union participated in making the agreement. And if it did, benefits to organized labor cannot be utilized as a cat's-paw to pull employers' chestnuts out of the Anti-Trust fires. Allen Bradley Co. vs. Local Union No. 3, I.B.E.W. 325, US 797, 89 L Ed 1939, 65 S. Ct. 1533."
>
> *United States vs. Women's Sportswear Association*, 336, U. S. 460.

The attempt of the Defendants in the case at bar to have their monopoly of professional baseball shielded by the Norris-LaGuardia Act and the Clayton Act, section 20,

if successful would be an obvious perversion of the purposes of these statutes.

II. Respondents Contend Baseball Is In a Unique Position and Must Be Exempt From the Anti-Trust Statutes.

The brief Amicus Curiai opens and closes with the argument that Baseball is unique. All through the brief of respondents is the same theme—but nowhere is it stronger or more erroneous in result than on page 66.

> "If the Court now overrules the *Federal Baseball* case, it cannot decree any modification of, or a partial application of, the existing Anti-trust Statutes, but must enforce them in their entirety even though that enforcement destroys the organization of professional baseball to the detriment of the players, the persons producing the games, and to the public."

The trial court having the facts before it will judge the regulations of baseball with respect to their history, purpose and result. (Board of Trade v. United States, 246 US 23). If the regulations are reasonable, they of course will stand. If not, they are unreasonable and, no one can argue, an unreasonable regulation should fall.

III. Respondents Object to Reference to Facts Not in the Complaint

Respondents attack petitioners brief because he explains his position by asserting facts supposedly not within his pleading. Respondents do not controvert petitioners asserted facts but merely attack them as if the question before the court now were one of technical pleading —on special demurrer or a motion to make more certain —rather than a question of the very jurisdiction of the court.

Petitioner in his complaint alleged ultimate facts—not detailed evidentiary facts as have been necessary for him to argue. Also, those facts surrounding the great Ameri-

can Pastime Baseball are so notorious as to be subjects of judicial notice.

IV. Respondents Admit the Courts Jurisdiction

On page two of the brief Amicus Curiae and page 65 of respondents brief, it is admitted they do not contend that none of the activities of organized baseball or the respondents is subject to federal regulation. What respondents contend is that the subject matter of this action involves only the local exhibition, the players regulations and that neither of these is subject to federal regulation. However, petitioner in point I (b) above has pointed out that the subject matter of this action is the whole unlawful scheme to monopolize and control all of the activities of organized baseball. Thus, In view of the respondents admission of the extent of the federal jurisdiction this Court's decision would seem clear.

V. Respondents Claim the Exhibition is Not Commerce

(a) The writer of the brief Amicus Curiae states that it takes two to engage in commerce; that the spectator is not engaged in commerce thus the exhibitor is not engaged in commerce. That logic seems ridiculous when we consider modern transactions involving many, many parties, some of whom are engaged in commerce and some of whom are not. It is of course obvious the modern baseball exhibition involves many parties, are they all not engaged in commerce because the spectator is not?

To the general rule in the brief Amicus Curiae they set out such vast exceptions to their rule as "transportation and its counterparts and cases such as animal migration and communication" that the rule is again devoid of any meaning. In any case an exhibition is exactly comparable to a communication and would thus fit within the specific exception.

(b) In the brief Amicus Curiae all of the cases cited, except Moore v. New York Cotton Exchange, 270 U. S. 593,* to show that the local activity though connected as closely to interstate commerce as generation of electricity to its transmission over interstate lines, is still not interstate commerce, are cases involving the state power to tax and not the federal power to govern. We submit the established line of demarcation between local commerce and the beginning of interstate commerce is not the same line when you approach it from the question of federal power and not the question of state power to tax.

Actually, the brief Amicus Curiae is merely a restatement of the same writers position as shown in his article, "Insurance as Commerce—In Constitution and Statute" 57 Harvard Law Review 937. (1944) Using the same arguments, rationale and cases, it is asserted that the result in United States v. South Eastern Underwriters Assn. (322 U.S. 293) is so erroneous as to be shocking. We submit neither the article nor the brief overrule the U. S. v. South Eastern Underwriters Case and are the law.

(c) In the brief Amicus Curiae it is apparently admitted that, under the doctrine of the Mandeville Island Farms Case, an interference with the interstate exhibition of baseball would be subject to federal regulation. However, the contention is made that the player regulations do not effect the interstate exhibition of baseball—but in fact preserve it. That statement of fact is contrary to the allegations of the complaint (R. 36, 38).

The argument is apparently that control of sugar beets effects the interstate commerce in sugar, but that control of the players, from whom games are produced, cannot effect the interstate broadcast of the exhibition.

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*In this case the court held it had jurisdiction but affirmed the dismissal on the merits.

Following that line of reasoning and the Utah Power and Light Co. v. Pfost (286 U.S. 165) a state taxation case cited to support that reasoning, the generation of electricity is a local activity and control of the generator could in no manner effect the interstate transmission of electrical power. The absurdity is patent.

We respectfully submit that the United States District Court has jurisdiction of the subject matter of this action and the Courts below were in error.

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